

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.71 of 2000

Date of decision : August 23, 2007

State of H.P.	...Appellant.
Versus	
Pritam Singh	...Respondent.

Coram

The Hon’ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting? No.

For the Appellant : Mr. Som Dutt Vasudeva, Additional Advocate General with Mr. D.S. Nainta, Deputy Advocate General.

For the Respondent : Mr. Vijay Bhatia, Advocate.

Surjit Singh, Judge(Oral)

Heard and gone through the record.

2. Respondent was sent up for trial for an offence punishable under Section 408 I.P.C. for allegedly embezzling certain amount of money, to be exact Rs.23,091/-, while working as Secretary of a Co-operative Society during the year 1987-88.

3. There were several allegations. Two of such allegations were that from PW-3 Shiv Ram Bhatia, Treasury Officer, the respondent received a sum of Rs.2191/- on account of rent on 8.3.1988, but did not account for that amount of money. Another allegation was that PW-5 Shakuntla Devi had her account with the Society and there were two bogus entries regarding withdrawal of Rs.12,000/- though she had not withdrawn any amount of money. There were some other allegations also.

Whether reporters of the local papers may be allowed to see the judgment?

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4. Prosecution examined PW-3 Shiv Ram Bhatia, Treasury Officer, who stated that he had paid an amount of Rs.2191/- on account of rent to the Secretary of the Society. Admittedly, the respondent was the Secretary of the Society during those days. Similarly, PW-5 Shakuntla Devi stated that she used to deposit the money with the respondent and the entries used to be made by him in her pass book. She stated that she had never withdrawn any amount of money from her account, but there are two entries in the account books of the Society indicating that she had withdrawn Rs.12,000/-, Rs.8000/- on one occasion and Rs.4000/- on the other.

5. Prosecution examined another witness, named Beli Ram, PW-4, who stated that he had not taken any loan from the Society, but the prosecution proved on record a pronote purporting to have been executed by this witness for a sum of Rs.2000/- by way of security for the loan. Prosecution also examined the Judicial Magistrate before whom the respondent made a statement, under Section 164 Cr. P.C., during investigation. This statement was made by him in the course of the proceedings of an application moved by the Investigating Officer for taking the specimen signatures and writings of the respondent. The respondent stated that the entire record pertaining to the payments and receipts of the society, recurring deposit accounts as also the loans, used to be maintained by him and he used to make entries in his own hand (***Apni Kalam Se***).

6. Trial Court, without taking into account the evidence of these witnesses as also the admission of the respondent in his statement under Section 313 Cr. P.C. about his making the aforesaid statement before the Judicial Magistrate in the proceedings for taking his specimen signatures and writings, has disposed of the matter in a

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slipshod manner mainly relying upon the denial of the respondent about the allegations against him and picking up a sentence from the statement of the Pardhan of the Society, namely Dharam Singh, that there was a separate cashier in the society and holding that that cashier was supposed to maintain the accounts. The trial Court has not bothered to consider the admission made by the respondent before the Judicial Magistrate, which he admitted in the course of his examination under Section 313 Cr. P.C. also, that the accounts of the Society used to be maintained by him personally and that he used to keep the accounts of recurring deposits, loans and receipts and payments of the Society. Thus, the judgment of the trial Court is no judgment in the eyes of law. The same is, therefore, set aside and the case is sent back to the trial Court with the direction to decide the same afresh, after rehearing the parties and taking into account the entire evidence on record, i.e. the oral evidence as also the documentary evidence adduced by the parties. Parties are directed to appear before the concerned Judicial Magistrate on 12th September, 2007.

August 23, 2007_(ss)

(Surjit Singh), J